

**Statement of Senator Tim Johnson, (D-SD)**  
**Senate Committee on Banking, Housing and Urban Affairs**  
**“Examining the Regulation and Supervision of Industrial Loan Companies”**  
**October 4, 2007**

Before I make a few comments regarding the regulation and supervision of ILCs, I would like to thank Chairman Dodd for placing the ILC issue on the top of his agenda for this fall. I would also like to thank Senator Brown for chairing this hearing, as well as for his interest and commitment to this very important issue.

The ILC issue raises questions that I believe the Senate must consider: whether the scope and purpose of industrial loan companies have expanded beyond their original purpose to serve the needs of industrial workers; whether FDIC supervision and regulation of ILCs needs to be strengthened; whether ILCs should be subject to the consolidated supervision framework established in Gramm-Leach-Bliley; and whether the ILC loophole should be closed. The House of Representatives has already addressed these issues with their bipartisan bill, H.R. 698.

To give some historical perspective, the current debate surrounding the commercial ownership of ILCs is not unlike the debate surrounding the Gramm-Leach-Bliley Financial Services Modernization Act of 1999, and efforts to close the loophole that allowed any commercial firm to buy a unitary thrift holding company. Congressman Jim Leach, Congressman Steve Largent and I introduced an amendment to close the unitary thrift loophole. Despite significant opposition, the loophole was closed, thus eliminating a dangerous threat to the erosion of the division between banking and commerce.

It appears that the ILC loophole, like the unitary thrift loophole, is expressing itself as another avenue toward the mixing of banking and commerce. This is evidenced by the increasing number of commercial companies that have taken advantage of the exemption that allows ILCs to own and operate banks outside of the supervisory and regulatory framework established by Congress many years ago.

Fifty nine ILC charters have been granted since 1984 with Federal Deposit Insurance, with one half of these after 1999. Additionally, assets of ILCs grew from \$3.8 billion in 1987 to over \$155 billion in 2006. I think these numbers are telling of the potential danger this loophole poses.

Today, ILCs are able to engage in many of the same types of activities as other FDIC insured depository institutions. And since Gramm-Leach-Bliley, this charter is the only vehicle through which commercial companies and non-bank entities can control an insured depository institution and engage in banking activities.

I don't think that Congress could have predicted the level of growth that ILCs have experienced, and even though we specifically created exceptions for ILCs in 1987, that does not absolve us of our responsibility to carefully review the changes in the current landscape and respond thoughtfully and carefully.

Today, though, we are under a time constraint. In July of 2006, the FDIC placed a six month moratorium on any applications for deposit insurance by an ILC. In January of 2007, that moratorium was extended for an additional year on applications for deposit insurance and change in control notices ILCs owned by commercial companies. This moratorium was extended to provide Congress with the opportunity to address the safety and soundness issues surrounding commercial ownership of ILCs under existing law. The FDIC awaits action and guidance from the Congress before the moratorium expires on January 31, 2008. That said, Congress has established a framework for maintaining the separation of banking and commerce time and time again.

Senators Brown and Allard, and I introduced S. 1356 in May. I believe this legislation addresses the regulatory and supervisory concerns of the ILC loophole, but I also recognize that this is not the only way to approach this issue. I look forward to working with my colleagues on the Banking Committee to find a workable solution to the regulatory and supervisory concerns and the potential risks posed by commercial ownership of ILCs.

In addition, to my statement for the record, I would also ask that I am able to submit two letters from the South Dakota Bankers Association and the Independent Community Bankers of South Dakota highlighting the importance of this issue to my state's communities, the written testimony I provided the FDIC on April 10, 2006 for their hearing on the Proposed Wal-Mart Bank's Application for Federal Deposit Insurance, and the GAO's September 2005 study titled "Industrial Loan Corporations: Recent Asset Growth and Commercial Interest Highlight Differences in Regulatory Authority for the record.